Nos. 280, 281, 418

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HAROLD B. WILLEY, Cle

In the Supreme Court of the United States

October Term, 1953

No. 280

PHILLIPS PETROLEUM COMPANY, Petitioner,

vs.

STATE OF WISCONSIN, et al., Respondents.

No. 281

STATE OF TEXAS, et al., Petitioners,

vs.

STATE OF WISCONSIN, et al., Respondents.

No. 418

FEDERAL POWER COMMISSION, Petitioner,

vs.

STATE OF WISCONSIN, PUBLIC SERVICE COMMISSION OF WISCONSIN, et al., Respondents.

JOINT BRIEF AMICI CURIAE

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JOINT BRIEF AMICI CURIAE

OPINIONS BELOW

The opinion of the Court of Appeals for the District of Columbia is reported in 205 F. 2d 706 (1953). The opinion and accompanying order of the Federal Power Commission is reported in 10 F. P. C. 246 (1951).

JURISDICTION

The jurisdiction of this Court is invoked under 52 Stat. 831 (1938), 15 U. S. C. §717r(b) (1946 ed.) and 28 U. S. C. §1254(1) (Supp. IV, 1946 ed.).

QUESTION PRESENTED

Is Phillips Petroleum Company a "natural gas company" within the meaning of the Natural Gas Act so that the Federal Power Commission has jurisdiction to fix the rates at which Phillips sells natural gas to five interstate pipeline companies for interstate transportation and resale for ultimate distribution to the public?

STATUTE INVOLVED

The pertinent provision of the Natural Gas Act (Act of June 21, 1938, c. 566, 52 Stat. 821, as amended, 15 U. S. C. 717 et seq., 1946 ed.) is as follows:

> "Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.
>
> "(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local

distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

STATEMENT OF THE CASE

Briefly, the facts concerning the sales made by Phillips which raise the question here are these: Phillips owns and operates natural gas gathering systems and processing plants. Through progressively larger pipelines it gathers gas that it produces from its own wells and other gas that it buys, at common points in and near its processing plants (R. 1743). At these plants it processes the gas to make it salable or to recover extractable products or both (R. 1742-43). Phillips then moves the gas a short distance to meters located either just within or outside the plant enclosure. At these meters the gas is delivered by Phillips to five interstate pipeline companies in fulfillment of sales contracts previously made (R. 1691-1711, 1743-44). These pipeline companies then transport the gas in interstate commerce to the states where it is resold and ultimately distributed to the public (R. 1827-34).

INTEREST OF AMICI CURIAE

This brief is filed by the States of Minnesota, Iowa and Nebraska and the City of Minneapolis pursuant to Rule 27 (9) and (d) of the Rules of the United States Supreme Court.

These amici curiae are all vitally concerned and will be affected by the outcome of these cases. Northern Natural Gas Company, through its subsidiary, Independent Natural Gas Company, purchases gas from Phillips Petroleum Company, the sales of which are involved in these cases. (Northern Natural Gas Company will some-

times hereafter be referred to as "Northern" and Phillips Petroleum Company as "Phillips.")

The common interest and concern of Minnesota, Iowa and Nebraska and the City of Minneapolis is evidenced by the fact that natural gas is sold by Northern to direct consumers of Northern, and to utility companies in these three states who in turn distribute and sell the gas to ultimate consumers. In 1953 Northern sold approximately 240,000,000 MCF of gas in these three states. In 1954 it is estimated that Northern will sell approximately 270,000,000 MCF of gas in these three states.

It is estimated by Northern that out of its total gas purchases of approximately $40,000,000 in the year 1954, approximately $10,000,000 will be paid to Phillips for gas purchased by Northern to be distributed in the approximate volumes related below in the states of Minnesota, Iowa and Nebraska. See Exhibit 83, In the Matter of Northern Natural Gas Co., Federal Power Commission docket No. G-2217 (hereinafter cited as "F. P. C. docket No. G-2217.")

Exhibit 6 in F. P. C. docket No. G-2217 discloses that the total system-wide sales of Northern for the year 1954 are estimated at approximately 288,000,000 MCF.

Northern estimates that it or its wholly owned or controlled subsidiaries will purchase from Phillips for the year 1954 approximately 83,816,000 MCF. See Exhibits 17, 80 and 82 in F. P. C. docket No. G-2217.

These figures disclose that the purchases estimated to be made by Northern, or its subsidiaries, from Phillips will constitute approximately 29% of the total system-wide estimated sales of Northern for the year 1954.

The particular interest and concern of the sovereign states and the City of Minneapolis, who are here amici curiae, are as follows:

1. STATE OF MINNESOTA. The particular interest and concern of the State of Minnesota in the outcome of this case arises in part from the fact that the State of Minnesota purchases gas as a direct customer from Northern. It also purchases gas from distributing companies which buy all of their gas from Northern. Northern is the only interstate pipeline company serving natural gas in the State of Minnesota.

The total volume of gas bought by the State of Minnesota, in its sovereign capacity, for various State institutions, in the year 1953 amounted to 2,414,299 MCF, at a cost of $428,701.32.

During 1953 Northern sold approximately 105,000,000 MCF of natural gas in the State of Minnesota which would produce a total revenue to Northern at rates under the Federal Power Commission's opinion No. 233 and accompanying order of July 30, 1952, docket No. G-1881, 95 P. U. R. (N. S.) 143, of approximately 25 million dollars.

The total volume which Northern estimates it will sell in the State of Minnesota for the year 1954 is approximately 125,000,000 MCF. See Exhibit 6 in F. P. C. docket No. G-2217.

Approximately 43% of the total estimated sales of Northern for the year 1954 will be made in the State of Minnesota for ultimate public consumption.

2. CITY OF MINNEAPOLIS. The particular interest and concern of the City of Minneapolis in the outcome of this case is based on the fact that:

(1) the City of Minneapolis purchased gas, through its various governmental departments, from Minneapolis Gas Company during the year 1953 in the amount of 272,098 MCF at a cost of $134,517.08;

(2) Minneapolis Gas Company purchases all of its gas from Northern; and

(3) the Minneapolis Gas Company operates under a franchise granted by the City of Minneapolis, which involves the rates to be charged to the users of gas within the city. It is therefore necessary for the protection of the interests of the City of Minneapolis and citizen consumers of gas within the the city, that the City of Minneapolis express its concern and interest in the outcome of this case.

3. STATE OF IOWA. The State of Iowa and many of the citizens thereof are vitally concerned with the outcome of this case. Northern sells natural gas to approximately 75 communities in the State of Iowa, including the cities of Des Moines, Council Bluffs, Ames, Boone, Atlantic, Fort Dodge, Mason City and Sioux City. In 1953 the citizens of the State of Iowa purchased from Northern 57,656,000 MCF of natural gas.

Michigan-Wisconsin Natural Gas Company also sells natural gas to many Iowa communities, including Fort Madison, Fairfield, Burlington, Centerville, Mt. Pleasant and Keokuk. In 1953 this company sold approximately 2,500,000 MCF of natural gas in the State of Iowa.

Natural Gas Pipeline Company of America, while not directly concerned in the present litigation, will be directly affected with the decision rendered herein and that Company sells natural gas to many Iowa communities, including Davenport, Cedar Rapids and Clinton. In 1953 Natural Gas Pipeline Company sold 29,174,404 MCF in the State of Iowa.

It can readily be seen that the State of Iowa and its citizens have a direct and deep interest and concern in the present litigation.

4. STATE OF NEBRASKA. Not only the citizens of the State of Nebraska, but the state government itself, are consumers of large volumes of natural gas supplied by interstate pipeline companies. Therefore, the State, on behalf of itself and its citizens, is vitally concerned with the outcome of the instant case.

There are approximately 224 cities and towns in the state of Nebraska served natural gas from four interstate pipelines, namely, Northern Natural Gas Company, Kansas-Nebraska Natural Gas Company, Inc., Natural Gas Pipeline Company of America and North Central Gas Company. There are also twenty-three major activities or institutions owned and operated by the State of Nebraska which are so served natural gas.

During the year 1952, the interstate pipelines, operating in Nebraska, supplied approximately 70,000,000 MCF of natural gas to the consumers in the state, from which approximately $16,700,000 was paid to them.

In 1953 the State of Nebraska and its citizens purchased solely from Northern Natural Gas Company approximately 49,000,000 MCF of natural gas, costing approximately $13,720,000. It is estimated that in 1954 Northern will sell 61,000,000 MCF of natural gas to the State of Nebraska and its citizens. See Exhibit 6 in F. P. C. docket No. G-2217. This volume of natural gas is estimated to cost $18,300,000.

The State of Nebraska, during the year 1953, purchased for its own institutions a total of 1,839,700 MCF of natural gas from Northern and Kansas-Nebraska Natural Gas Company, at a cost to it of $532,138.13.

Included among the cities so served in Nebraska are Omaha, its largest city, and Lincoln, its capitol city. Representative of the other cities are Beatrice, Fremont, Hastings, Kearney, Norfolk, York, Scottsbluff, Grand Island, Nebraska City and North Platte.

From the foregoing, we believe it is apparant that the State of Nebraska and its citizens have a substantial interest in the instant case and are genuinely concerned in its decision.

SUMMARY OF ARGUMENT

The intent of Congress to regulate the sales in interstate commerce of natural gas for resale made by Phillips here is obvious from the plain and unambiguous language of §1 of the Natural Gas Act. It is clear from the language of §1(b) of the Act that the "production or gathering" proviso was intended to mean only the local activities of physical production or physical gathering which can be constitutionally regulated by a state. Therefore, the "production or gathering" proviso of §1(b) does not except the interstate sales made by Phillips here from jurisdiction of the Federal Power Commission. Any other construction would nullify the wholesome intent of Congress.

ARGUMENT

I. The sales made by Phillips to the five interstate pipeline companies are "sales in interstate commerce of natural gas for resale for ultimate public consumption" within the plain meaning of §1 of the Natural Gas Act, and therefore, are subject to the rate-making power of the Federal Power Commission.

In resolving the question presented in this case it is necessary to first determine whether the sales made by Phillips to the five interstate pipeline companies are within the purview of the Natural Gas Act. Only then is it material to consider whether the proviso in §1(b) of the Act regarding "production or gathering" excepts these sales from the jurisdiction of the Federal Power Commission. For if the sales involved here were not covered by the Act, they would not be subject to federal regulation and the proviso of §1(b) would have nothing on which to operate. An activity not within the Act could not be taken out of it.

The intent of Congress as to what activities are subject to federal regulation under the Natural Gas Act is clearly evidenced by the plain and unambiguous language of §1(b) of the Act. See *Interstate Natural Gas Co. v. Federal Power Commission,* 156 F. 2d 949, 951 (5th Cir. 1946), affirmed, 331 U. S. 682 (1947); *Peoples Natural Gas Co v. Federal Power Commission,* 127 F. 2d 153, 155 (D. C. Cir. 1942), cert. denied, 316 U. S. 700. Section 1(b) conveys an obvious and definite meaning; the Natural Gas Act shall apply to three distinct things:

(1) the transportation of natural gas in interstate commerce;

(2) its sale in interstate commerce for resale; and

(3) natural gas companies engaged in such transportation or sale.

See *Panhandle Eastern Pipe Line Co. v. Indiana Public Service Commission,* 332 U. S. 507, 516 (1947).

The reasons for federal regulation of the above interstate activities are set forth in the explicit language of §1(a) of the Act:

(1) "the business of transporting and selling gas for ultimate distribution to the public is affected with a public interest"; and

(2) "Federal regulation in matters relating to the transportation and sale thereof in interstate and foreign commerce is necessary in the public interest."

Thus, the coverage of the Natural Gas Act is succinctly stated in language which is so clear and definite that the intent of Congress is inescapable: the business of transporting and selling natural gas in interstate commerce for ultimate distribution to the public is affected with a public interest and therefore is made subject to federal regulation to protect that interest.

Are the sales here by Phillips within the affirmative coverage of the §1(b) of the Act? Phillips admits in its brief submitted to the Federal Power Commission (p. 38) and it is evident from the record that these sales are sales "in interstate commerce of natural gas for resale for ultimate public consumption." The Commission's finding to this effect is undisputed (R. 1712, 1740; 16 F. P. C. 246, 262, 276). The Commission also found that Phillips' operations here include the transportation of natural gas in interstate commerce within §1(b) of the

Act. This interstate transportation by Phillips will not be considered, however, because if the Commission has jurisdiction over the interstate sales made by Phillips here, the question of jurisdiction over the interstate transportation by Phillips will be unnecessary to the disposition of this case.

In its opinion (R. 1740, 10 F. P. C. at 270) the Commission said:

> "But for the exemption of production and gathering in §1(b), as already noted, Phillips would be a 'natural-gas company'. *It concedes and on the record here it could not deny, that the sales involved are sales 'in interstate commerce of natural gas for resale for ultimate public consumption' within §1(b)'s affirmative stated coverage of the act,* when considered independently of the exemption of production and gathering." (Italics added.)

The Commission's finding on this point was cited with approval by the Court of Appeals for the District of Columbia in its review of the jurisdictional question raised here in *State of Wisconsin v. Federal Power Commission,* 205 F. 2d 706, 710 (D. C. Cir. 1953):

> "The Commission finds that the sales involved here are sales in interstate commerce of natural gas for resale. That finding is not disputed."

That the sales of natural gas made by Phillips here are sales in interstate commerce for resale is also shown by the recent decision of this Court in the companion cases of *Michigan-Wisconsin Pipe Line Co. v. Calvert* and *Panhandle Eastern Pipe Line Co. v. Calvert,* Nos. 198-201, U S. Sup. Ct., Feb. 8, 1954 (22 U. S. Law Week 4119). The operations of the Michigan-Wisconsin Pipe Line Company which presented the question in that decision appear identical to the operations of Michigan-

Wisconsin here. In both instances Michigan-Wisconsin accepted delivery of natural gas from Phillips at the meter located just within the fence of the Sherman-Hansford processing plant in Texas. After the gas was taken into the Michigan-Wisconsin pipes, it moved, in a steady and continuous flow, across state lines to consumers outside of Texas. (Compare R. 1690-1711, 10 F. P. C. at 251-53, with *Michigan-Wisconsin Pipe Line Co. v. Calvert*, supra at 4116-17.)

The question presented in the Michigan-Wisconsin and Panhandle Eastern cases was (*Michigan-Wisconsin Pipe Line Co. v. Calvert*, supra at 4116):

> "* * * whether the Commerce Clause is infringed by a Texas tax on the occupation of 'gathering gas', measured by the entire volume of gas 'taken', as applied to an interstate natural gas pipeline company, where the taxable incidence is the taking of gas from the outlet of an independent gasoline plant within the State for the purpose of immediate interstate transmission."

In striking down the Texas occupational tax as an undue burden on interstate commerce which violated the Commerce Clause, this Court held that *the taking of gas by Michigan-Wisconsin was essentially a part of interstate commerce itself.*

Earlier decisions of this Court further support the finding by the Federal Power Commission that the sales by Phillips to the five interstate pipeline companies are sales in interstate commerce of natural gas for resale. See *Interstate Natural Gas Co. v. Federal Power Commission*, 331 U. S. 682, 688-90 (1947), Cf. *Jersey Central Power & Light Co. v. Federal Power Commission*, 319 U. S. 61, 69 (1943); *Public Utilities Commission v. Attelboro Steam & Electric Co.*, 273 U. S. 83, 86 (1927); *Mis-*

souri ex rel. Barrett v. Kansas Gas Co., 265 U. S. 298, 308 (1924).

II. The meaning of §1 of the Natural Gas Act is clear and does not, by the "production or gathering" proviso of §1(b), except the interstate sales made by Phillips in this case from jurisdiction of the Federal Power Commission. From the language used, the intent of congress is plainly evidenced that the "production or gathering" proviso does not reach the interstate sales here but is confined to local activities of physical production and physical gathering.

The purpose of Congress to regulate the sales by Phillips here is evident from a reading of the affirmative coverage provisions of §1(b) of the Act. Without more it is clear that these interstate sales would be subject to the rate-making jurisdiction of the Federal Power Commission. It is necessary, however, to consider whether the proviso of §1(b) regarding "production or gathering" affects the Commission's jurisdiction over these interstate sales by Phillips.

After affirmatively covering interstate transportation and sales of natural gas for ultimate public consumption, §1(b) then states that the Act shall not apply to four activities:

(1) "any other transportation or sale of natural gas" [other than those in interstate commerce];
(2) "the local distribution of natural gas";
(3) "the facilities used for such [local] distribution"; and
(4) "the production or gathering of natural gas."

Are these activities consistent with federal regulation of interstate transportation and sales of natural gas or

do they exempt some phases of such transportation and sales from jurisdiction of the Federal Power Commission?

The cardinal rule of statutory construction is to ascertain and declare the intention of the legislature and carry such intention into effect to the fullest degree. Where the will of the lawmaking body is declared in plain and unequivocal terms, a construction should not be adopted which would nullify or defeat this intention. It is evident from the clear and unambiguous language of §1 (a) and the affirmative coverage of §1(b) of the Act that Congress intended to subject the interstate sales made by Phillips in this case to federal regulation in the public interest. The specific question is thus raised: does the "production or gathering" proviso of §1(b) of the Act carve out from jurisdiction of the Federal Power Commission these interstate sales of natural gas made by Phillips to the five pipeline companies?

The general purposes of a proviso were stated in the decision of *Minis v. United States,* 15 Pet. 423, 445 (1841), where this Court said:

> "The office of a proviso, generally, is either to except something from the enacting clause, or, to qualify or restrain its generality, *or to exclude some possible ground of misinterpretation of it,* as extending to cases not intended by the Legislature to be brought within its purview." (Italics added.)

See *United States v. Morrow,* 266 U. S. 531, 534 (1925). It is a fundamental rule of statutory construction that a proviso should be strictly construed and held to include no case not clearly within the purpose, letter or express terms of the proviso. In *United States v. Dickson,* 15 Pet. 141, 165 (1841), this Court said:

> "Passing from these considerations to another, which necessarily brings under review the second

> point of the objection to the charge of the court below, we are led to the general rule of law which has always prevailed, and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms. *In short, a proviso carves special exceptions only out of the enacting clause; and those who set up any such exception, must establish it as being within the words as well as within the reason thereof.*" (Italics added.)

Cf. *United States v. McElvain*, 272 U. S. 633, 639 (1926); *Spokane & Inland Empire R. Co. v. United States*, 241 U. S. 344, 348 (1916); *Ryan v. Carter*, 93 U. S. 78, 83 (1876). See *Hartford Electric Light Co. v. Federal Power Commission*, 131 F. 2d 953, 962 (2nd Cir. 1942), cert. denied, 319 U. S. 741 (1943). Therefore, if it is possible, such construction of a proviso should be adopted as is consistent with, and not repugnant to, the purpose and intent of the Act.

When § 1 of the Natural Gas Act is read in its entirety, the intent of Congress, as to what shall be subject to federal regulation, is evident from the clear and unambiguous language employed. Section 1(a) states that interstate sales and interstate transportation of natural gas for ultimate distribution to the public must be subject to federal regulation in the public interest; section 1(b) affirmatively declares that the transportation of natural gas in interstate commerce and its sale in interstate commerce for resale are subject to the Act; the provisos in § 1(b) merely exclude any ground for misinterpreting the coverage of the Act by listing certain local activities which can be constitutionally regulated

by the states and are not to be confused with interstate sales for resale or interstate transportation of natural gas. The provisos are only by way of explanation as to what is covered by the Act.

Although the "production or gathering" proviso was not prefaced by the descriptive term "local," it is obvious from the plain language used and the tenor of the other provisos that Congress intended it to mean local physical production and local physical gathering. Also, the definite meaning of § 1 of the Act cannot be avoided by any technical semantic argument as to what is "production" or what is "gathering." The intent of Congress, as evidenced by the unambiguous language of the Act, to regulate the sales by Phillips here as sales "in interstate commerce of natural gas for resale," is paramount and must be given full effect.

The plain language of § 1 of the Natural Gas Act is corroborated by the purpose of the Act, as shown in its legislative history, and the prior decisions of this Court. The legislative history of the Act has been reviewed by this Court on numerous occasions so there is no need to repeat what has been said before, other than to briefly comment on it. See *Panhandle Eastern Pipe Line Co. v. Indiana Public Service Commission,* 332 U. S. 507, 520 (1947); *Interstate Natural Gas Co. v. Federal Power Commission,* 331 U. S. 682, 689-90 (1947); *Colorado Interstate Gas Co. v. Federal Power Commission,* 324 U. S. 581, 601 (1945); *Federal Power Commission v. Hope Natural Gas Co.,* 320 U. S. 591, 609-10 (1944); *Illinois Natural Gas Co. v. Central Illinois Public Service Commission,* 314 U. S. 498, 506 (1942). As stated in these opinions of this Court, the purpose of the Natural Gas Act was to provide for the regulation of natural gas companies transporting and selling natural gas in interstate

commerce. What was sought to be reached were the wholesale sales of natural gas in interstate commerce which were national in character and not subject to state regulation, even in the absence of Congressional action.

In *Illinois Natural Gas Co. v. Central Illinois Public Service Comm.*, supra at 506, this Court said:

> "An avowed purpose of the Natural Gas Act of June 21, 1938, was to afford, through the exercise of national power over interstate commerce, an agency for regulating the wholesale distribution to public service companies of natural gas moving interstate, which this Court had declared to be interstate commerce not subject to certain types of state regulation. * * * By its enactment Congress undertook to regulate a defined class of natural gas distribution without the necessity, where Congress has not acted, of drawing the precise line between state and federal power by the litigation of particular cases."

As this Court pointed out in *Federal Power Commission v. Hope Natural Gas Co.*, supra at 610, the Natural Gas Act was passed to protect the public interest:

> "The primary aim of this legislation was to protect consumers against exploitation at the hands of natural gas companies."

Because of the clear language of § 1 of the Natural Gas Act and its purpose, it is hardly conceivable that Congress intended that the "production or gathering" proviso of § 1(b) remove from jurisdiction of the Federal Power Commission the wholesale sales made by Phillips in interstate commerce to the five pipeline companies. The interstate sales involved in this case are one of the things specifically intended to be covered by the Act; therefore, it seems incongruous that Congress would have removed them from the purview of the Act by means of a proviso.

The identical jurisdictional question raised here was before this Court in *Interstate Natural Gas Co. v. Federal Power Commission,* 331 U. S. 682 (1947). That case involved the jurisdiction of the Federal Power Commission to regulate sales made in the field by Interstate Natural Gas Co. in Louisiana to three pipeline companies, each of which transported the gas so purchased to markets in states other than Louisiana. The Interstate case is not distinguishable from the instant situation merely because Interstate Natural Gas Company happened to be a natural gas company within § 2(6) of the Act on account of other operations conducted by it. The jurisdictional question in the Interstate case turned solely on the sales made in the field by Interstate and not by the status of the company's other operations. This Court held: (1) the sales made in the Louisiana gas fields to three pipeline companies for transportation to other states and resale were "sales in interstate commerce"; (2) the "production or gathering" proviso of § 1(b) of the Act did not remove these sales from the Commission's power of regulation. This Court concluded that regulation of the interstate sales involved was predominantly a matter of national concern because unreasonable charges exacted at this stage of the interstate movement would have to be covered by rates charged the ultimate consumers of the gas. The Natural Gas Act was designed to specifically avoid such situations. See *Peoples Natural Gas Co. v. Federal Power Commission,* 127 F. 2d 153, 155 (D. C. Cir. 1942), cert. denied, 316 U. S. 700.

Additional judicial support for the plain meaning of § 1 of the Act that the scope of gathering and production is confined to the local activities of physical gather-

ing and physical production and does not reach the interstate transportation or sale of natural gas is found in the recent cases of *Michigan-Wisconsin Pipe Line Co. v. Calvert* and *Panhandle Eastern Pipe Line Co. v. Calvert*, Nos. 198-201, U. S. Sup. Ct., Feb. 8, 1954 (22 U. S. Law Week 4119). In those cases the facts were almost identical to the facts here regarding the sales by Phillips to the five interstate pipeline companies. In holding that the Texas occupational tax on gathering gas was void because the incidence of the tax was on interstate commerce, this Court said (supra at 4118, 4119):

> "But the tax here is not levied on the capture, gathering or production of the gas, but rather on its taking into interstate commerce *after* production, gathering and processing.
>
> * * * * *
>
> "* * * But the processing, on which the tax is *not* imposed, was done by Phillips and took place prior to the taxable event of 'taking'. As for the interference of title passing, appellees readily admit this levy was designed to avoid taxing the sale; and we think that, as a basis for finding a separate local activity, the incidence must be a more substantial economic factor than the movement of the gas from a local outlet of one owner into the connecting interstate pipeline of another. Such an aspect of interstate transportation cannot be 'carved out from what is an entire or integral economic process,' Nippert v. Richmond, supra, at 423, by legislative whimsy and segregated as a basis for the tax. The separation must be realistic."

The local aspects of production and gathering, as distinguished from the national aspects of interstate transportation and sales of natural gas, were also recognized by this Court in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U. S. 591, 612-13 (1944):

> "We do not mean to suggest that Congress was unmindful of the interests of the producing states in their natural gas supplies when it drafted the Natural Gas Act. *As we have said, the Act does not intrude on the domain traditionally reserved for control by state commissions;* and the Federal Power Commission was given no authority over 'the production or gathering of natural gas.' § 1(b). * * * Thus Congress was quite aware of the interests of the producing states in their natural gas supplies. *But it left the protection of those interests to measure other than the maintenance of high rates to private companies.* If the Commission is to be compelled to let the stockholders of natural gas companies have a feast so that the producing states may receive crumbs from that table, the present act must be redesigned. Such a project raises questions of policy which go beyond our province." (Italics added.)

The administrative decisions of the Federal Power Commission on the jurisdictional question in the instant case which are contrary to the clear and unambiguous language of the Natural Gas Act are entitled to no weight here. The plain meaning of the Act cannot be disregarded because the Commission, on occasion, has interpreted it narrowly. For a complete analysis of the course followed by the Commission, see the dissenting opinion of Commissioner Buchanan in the instant proceeding, 10 F. P. C. 246, 307-15.

CONCLUSION

The simple question here is whether Federal Power Commission should regulate the price of natural gas sold in the field and subsequently resold for ultimate public consumption. These amici curiae are gravely concerned over the steadily increasing cost of natural gas in the field in recent years.

Northern obtains its gas in Kansas, Texas, Oklahoma and New Mexico and resells practically all of such gas in the states of Nebraska, South Dakota, Iowa and Minnesota. As of December 31, 1953, there were approximately 685,000 ultimate consumers on Northern's system in that area. This includes domestic, commercial and industrial users. As of that date there were approximately 380,000 homes heated with natural gas in this area from the system of Northern alone. The increase in cost to the ultimate consumers in this area can be demonstrated by the records in the recent F. P. C. docket No. G-2217, a proceeding in which Northern filed for an increase in its wholesale rates (the fourth increase filed in the last four years). It is shown there that for twelve months ending June 30, 1953, Northern sold 226,000,000 MCF of natural gas in the area named. Northern estimates that in 1954 it will sell 279,000,000 MCF in the same area (Exhibit 7 in F. P. C. docket No. G-2217). This is an increase of *23.5%* in volume. For the 226,000,000 MCF of natural gas Northern paid $21,175,640 and for the 279,000,000 MCF it estimates it will pay $40,012,900 (Exhibit 16 in F. P. C. docket No. G-2217). This is an increase of *88%* in price. The Natural Gas Act was passed to protect the ultimate consumers from such apparently excessive charges.

We respectfully submit that the sales involved in the instant case are within the rate-fixing jurisdiction of the

Federal Power Commission. This Court should affirm the decision of the court below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, Assistant Attorney General for the State of Minnesota, hereby certifies that on the 6th day of March, 1954, he served a copy of the foregoing brief upon each of the parties of record in this proceeding by duly mailing a copy thereof by depositing the same in the United States mail, properly addressed and with postage prepaid, to counsel of record for each of said parties as follows:

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